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A Presence of the Past: The Legal Protection of Singapore's Archaeological Heritage

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*A Presence of the Past:
The Legal Protection
of Singapore's
Archaeological
Heritage*


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5 April 2011

Gold armband with kalpa head, East Carving, 14th century –
collection of the National Museum of Singapore

1

Legal Protection of Singapore's Archaeological Heritage

*Setting the Scene:
Archaeology in Singapore*




*Ancient lead statue recovered at the Parliament House site in 1994,
the first to be found in Southeast Asia*

2


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- ❖ OED defines *archaeology* as “[t]he scientific study of the remains and monuments of the prehistoric period”.
- ❖ Modern usage applies the term to research into the contemporary era as well.



3

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- ❖ Example: Ironbridge Gorge near Birmingham, UK, named after world's first cast iron bridge constructed at Coalbrookdale in 1779.
- ❖ Billed as the “birthplace of industry” – in Coalbrookdale, Abraham Darby discovered how iron could be smelted from its ore using coke, thus making it cheaper to extract the metal. This contributed to the Industrial Revolution.
- ❖ After archaeological and conservation work, Ironbridge Gorge was inscribed as a UNESCO World Heritage Site in 1986, and now has many museums and historical sites for visitors.

4

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- ❖ **1949** – First archaeological dig in Singapore at Pulau Ubin after chance find of Neolithic stone tools. Nothing else discovered.
- ❖ **1984** – Fort Canning Hill project: 30,000 artefacts from 14th century, including Chinese porcelain sherds; glass beads, fragments of glass vessels and molten lumps of glass; and 16 partial or whole coins, the oldest dating to the Tang Dynasty of China (618–906 CE).
- ❖ **1994, 1998, 2003–2004** – Projects at Parliament House and Empress Place Complexes, and St Andrew's Cathedral.



Legal Protection of Singapore's Archaeological Heritage

- ❖ These archaeological project have enabled theories to be developed about the pre-colonial history of Singapore.
- ❖ Fort Canning Hill probably the site of the ritual centre and palace precinct of Temasek, a port-settlement existing on Singapore island between the late 13th and 14th centuries. The large amount of glass found here suggests glass-making by artisans in the palace precinct.
- ❖ The main settlement area was north bank of the Singapore River, Iron and copper remains at Parliament House site suggest metalworking. Relatively large quantities of sherds of storage jars at the Empress Place and Old Parliament House sites, both near the river edge, may indicate the unloading of trade goods from ships and their storage.

6

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- ❖ Higher concentrations of coins at Parliament House, the Singapore Cricket Club on the Padang, and Saint Andrew's Cathedral suggest that trading activity took place further inland from the river.
- ❖ Significant quantities of foreign coins and sherds from imported ceramics evidence mercantile links between Temasek and communities in present-day China, Indonesia, Malaysia, Thailand and Vietnam.

Celadon and stoneware jarlets unearthed at St Andrew's Cathedral, 2003–2004



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- ❖ **2003–2004** – St Andrew's Cathedral project also turned up colonial-period and modern material, possibly originating from World War II middens (domestic refuse pits) and an air raid trench. This included a large number of empty tin cans and can opener keys, and intact crockery from the Adelphi Hotel which was across the road from the Cathedral at the time. The crockery may have been intentionally buried to prevent them from falling into the hands of the invading Japanese army or looters.
- ❖ **2004–2005** – Fort Tanjong Katong is possibly first fort in former British Malaya to be excavated. Artefacts found mostly modern fill from nearby land reclamation for East Coast Parkway, but items such as bottles and bricks might be studied for information about consumer patterns and trends of the 1960s and 1970s, and construction methods as an element of post-independence industrialization of Singapore.

Bottles from Fort Tanjong Katong



8

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- ❖ Local archaeologist Lim Chen Sian has called attention to the fact that archaeology is valuable for a deeper knowledge of Singapore's colonial military history, immigrant communities, and industrialization and its social and environmental impact.
- ❖ He warns: "It cannot be further emphasised that, faced with the exuberant pace of development, the archaeological reservoir of colonial period Singapore diminishes with each passing day."

9

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The Legal Framework for Facilitating Archaeology



*Serving ware from the former Adelphi Hotel,
from the St Andrew's Cathedral archaeological site, 2003–2004*

10

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Preservation of Monuments Act 1970

- ❖ Section 7 empowered PMB to authorize representatives to "enter for the purposes of investigation at all reasonable times upon any land which the Board may have reason to believe contains any monument and may make excavations on the land for the purpose of examination".
- ❖ **Limitation 1** – definition of *monument* in s 2(1): "any building, structure, erection or other work whether above or below the surface of the land, any memorial, place of interment or excavation... which is considered by the Board to be worthy of preservation by reason of its historic, traditional, archaeological, architectural or artistic interest." Excludes sites lacking evidence of structures having been put up.

11

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- ❖ **Limitation 2** – under s 7(1)(a), if PMB wished to conduct dig at dwelling-house or land used for the amenity or convenience of a dwelling-house, occupier had an absolute right to refuse.
- ❖ **Limitation 3** – although *chapeau* of s 7(1) appeared to empower excavations to be carried out, effect of sub-s (b) was that PMB had to obtain "the consent of every person whose consent to the making of the excavation would, apart from this subsection, be required". Relevant individual would be the person entitled to sue for trespass to the land, that is, the lawful occupier of the land.
- ❖ **Limitation 4** – Section 7 silent on disposition of movable items that might be found, in which case common law rules relating to law of finders and, possibly, treasure trove, applied. (More on this later.)
- ❖ **Limitation 5** – consequence of any wilful obstruction or hindrance of the PMB's representatives was a paltry fine of \$200: s 7(2).

12

Legal Protection of Singapore's Archaeological Heritage

National Heritage Board Act 1993

- ❖ Section 46 of the Act is like s 7 of Preservation of Monuments Board Act 1970 but with some important differences.
- ❖ NHB “may enter for the purposes of archaeological investigation or examination... upon any land which the Board has reason to believe contains any ancient monument and may make excavations in the land”: s 46(1).
- ❖ *Ancient monument* “means any monument which, in the opinion of the Board, is of public interest by reason of the historic, cultural, traditional, archaeological, architectural, artistic or symbolic significance attaching to it”: s 46(10).
- ❖ Oddly, definition does not refer to an ancient monument having to be old – is this to be implied? If so, does this mean that archaeology of 18th to 20th century Singapore not covered?

13

Legal Protection of Singapore's Archaeological Heritage

- ❖ Restrictions on entry into dwelling-houses and land used for amenity or convenience of dwelling-houses, and no excavation without consent: ss 46(2) and (3) (*in pari materia* with the PMA 1970, ss 7(1)(a) and (b)).
- ❖ Power to enter land includes power for authorized representative to take any assistance or equipment reasonably required, and to do anything reasonably necessary for carrying out purpose for entry: s 46(4).
- ❖ Penalty for wilfully obstructing or hindering a person in the exercise of powers conferred by the section is a fine not exceeding \$5,000 or imprisonment not exceeding one year or both: s 46(9).

14

Legal Protection of Singapore's Archaeological Heritage

Proposals for Reform



Fragments of celadon bowl (circa 14th century),
from the St Andrew's Cathedral archaeological site, 2003–2004

15

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- ❖ The Preservation of Monuments Act 2009 replaced the PMA 1970.
- ❖ The main change was to transfer the functions of the PMB to the NHB, and to dissolve the PMB.
- ❖ There is no longer any provision in PMA 2009 equivalent to s 7 of the PMA 1970. The only provision facilitating archaeological investigations is now s 46 of the NHB Act.

16

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❖ Two issues with the current regime:

- ❖ Powers provided by s 46 of the NHB Act are extremely limited. There is no scheme in place for identifying and protecting potential sites from being damaged by development.
- ❖ Ownership of archaeological finds is left up to the common law of finders and, possibly, treasure trove.

17

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Lack of Protection for Potential Sites

Consent Required for Excavation

- ❖ No legal requirement for developer to permit archaeological survey of a site destined for redevelopment.
- ❖ Section 46(3) provides that “no excavation shall be made under the power conferred ... except with the consent of every person whose consent to the making of the excavation would, apart from this subsection, be required”.
- ❖ Occupier of a site has final say as to whether an excavation may be carried out. He or she may refuse if, for instance, this would delay or halt works on the site. In this case, NHB would be limited to a surface investigation. This would severely hinder efforts to determine whether the site is of archaeological interest, and to gather and record information about it.

18

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No Requirement to Notify NHB of Finds or to Stop Work

- ❖ In Singapore, where almost all land is covered by buildings, roads and other structures, archaeological value of a site may become evident only after redevelopment works begin.
- ❖ But landowners, developers and contractors are under no duty to notify NHB if archaeological remains discovered, nor to stop work to avoid damaging them. Contractual penalties in building and construction contracts for delays act as a disincentive towards such reporting or work stoppage.
- ❖ NHB Act does not restrain works from being carried out on sites while investigations are proceeding. There is nothing to prevent a developer from continuing with demolition or construction works on a site that may impede an investigation and lead to the destruction of archaeological or historical evidence.

19

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Proposals for Reform

- ❖ **Heritage Register.** NHB should be empowered to declare areas of Singapore likely to be of archaeological significance as heritage zones.
- ❖ If a person wishes to carry out development within a zone, he or she must notify the NHB and allow an archaeological investigation to be carried out.
- ❖ If this is required by law, it can be planned for and should not cause development to be undue delayed.
- ❖ NHB will have to establish a professional archaeological unit to carry out such investigations.

20

Legal Protection of Singapore's Archaeological Heritage

- ❖ **Stop Work Requirement.** There should be an obligation on landowners, occupiers, developers and contractors to stop work upon discovering archaeological remains when developing a site, and to report the discovery to the NHB so it can investigate the site and, if necessary, place it on the Heritage Register.
- ❖ Laws of Australia, Ireland and UK may provide useful models.
- ❖ **Wider Powers over Excavations.** Ability of occupier to refuse consent for excavation should be removed. As regards excavations of dwelling-houses, it is submitted that NHB should be permitted to carry out an archaeological investigation if the owner embarks on a redevelopment project that involves excavation.

21

Legal Protection of Singapore's Archaeological Heritage

Ownership of Archaeological Finds

- ❖ The NHB Act authorizes the removal of samples for archaeological analysis (s 46(5)), and for objects of archaeological or historical interest to be taken into *temporary custody* and removed from the site “for the purpose of examining, testing, treating, recording or preserving it” (s 46(6)).
- ❖ However, the NHB “may not retain the object without the consent of the owner beyond such period as may be reasonably required” for the above purposes: s 46(7).

22

Legal Protection of Singapore's Archaeological Heritage

- ❖ Intriguingly, s 46(8) states: “Nothing in this section shall affect any right of the Government in relation to treasure trove.” This is the only mention of treasure trove in the Singapore statutes.
- ❖ Does this imply that treasure trove law applies in Singapore? How useful is it?
- ❖ The Act is largely silent on the issue of who owns the archaeological samples and objects.

23

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Treasure Trove

- ❖ An ancient prerogative, or right, of the British Crown.
- ❖ Any gold or silver in the form of coin, plate or bullion found deliberately concealed in a house, or in the earth or some other private place, with the intention of recovery, the owner thereof being unknown, belongs to the Crown or to some person holding a franchise of treasure trove from the Crown.
- ❖ For an object to be considered one of gold or silver, there must be a “substantial” amount – that is, more than 50% – of one of these precious metals in it: *A-G for the Duchy of Lancaster v GE Overton (Farms) Ltd* [1982] Ch 277, CA

24

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- ❖ Doctrine of treasure trove presumably extended to Singapore when it was part of the British Crown.
- ❖ I have not found any instances of it having been applied.
- ❖ During excavation on Fort Canning Hill for a reservoir, on 7 July 1926 a hoard of 14th-century gold artefacts was found. Treasure trove?



25

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- ❖ Treasure trove doctrine probably ceased to apply to Singapore after it achieved independence from Britain in 1963.
- ❖ Doctrine is arguably inconsistent with the republican system of government established by the Constitution, in which there is no monarch exercising prerogative rights.
- ❖ However, note *Webb v Ireland* [1988] IR 353 in which Supreme Court of Ireland held that a necessary ingredient of sovereignty in a modern State is the ownership by the State of objects which constitute antiquities of importance which are discovered and which have no known owner.
- ❖ Would Singapore courts hold likewise? Is this power part of executive authority vested in the President by Art 23 of the Constitution, and exercisable by him or by Cabinet?

26

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- ❖ In any case, treasure trove anachronistic and ill-suited to protecting the nation's heritage.
- ❖ Academic view is that it was originally a revenue-raising power.
- ❖ Shortcomings: elements of the law not easily satisfied; many heritage objects cannot qualify; a collection of objects can end up being divided between those constituting treasure trove and those that do not, diminishing the historical value of the objects and the collection.
- ❖ In the UK, treasure trove replaced by a new scheme under the Treasure Act 1996.

27

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- ❖ Law of finders applies to objects not qualifying as treasure trove.
- ❖ Ownership of an object found on private land can be asserted by landowner if the object is embedded in the land, or by the finder if the object is on the surface and the landowner has not manifested an intention to control the land and objects that may be found on it: *Parker v British Airways Board* [1982] QB 1004; *Waverley Borough Council v Fletcher* [1996] QB 334.
- ❖ Thus, title to an object will either lie with the finder or the landowner, depending on the circumstances. Either of them may deal with the object at will – including modifying it, pawning it, selling it locally or abroad, or even destroying it. The State has no claim.

28

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Proposals for Reform

- ❖ The law should define clearly what items ('antiquities'), discovered and undiscovered, are owned by the State.
- ❖ Uncontrolled searches for and removal of antiquities from heritage zones should be made illegal.
- ❖ People who chance upon antiquities should be required to report the finds and transfer the objects into the State's possession.
- ❖ There should be a system for rewarding finders of antiquities and private landowners to encourage the reporting of finds.
- ❖ Antiquities valuable to the nation's heritage should be prevented from being exported until the State has had an opportunity to acquire them if it desires.

29

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Conclusion

- ❖ Singapore law currently provides only a rudimentary framework for archaeology.
- ❖ It is submitted that the law should be revised to:
 - ❖ enable the NHB to take a proactive approach towards protecting and investigating sites; and
 - ❖ assert ownership of archaeological samples and objects for the public benefit.
- ❖ It is a misconception that archaeology is of no value to Singapore. From past projects, we have already discovered much about Singapore's position as a trading settlement in past centuries, and there is more that can be learned about Singapore's colonial past.
- ❖ Time moves on – objects that are presently new will become old and of historical value before long.

30

Legal Protection of Singapore's Archaeological Heritage



Gold armband with kalpa bead, East Canning, 14th century – collection of the National Museum of Singapore

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31